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10/724,958	12/01/2003	William J. Bufkin		3614

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EXAMINER

EDELL, JOSEPH F

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3636

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/724,958
Filing Date: December 01, 2003
Appellant(s): BUFKIN, WILLIAM J.

J. W. Horton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09 January 2006 appealing from the Office action mailed 07 April 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 5, 10, and 13-19 have been amended subsequent to the final rejection.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on pages 1-9 (no page numbers included in Appeal Brief) of the Appendix to the appellant's brief. The minor errors are as follows: claim 11 should not have been included in the Appendix, as it was indicated as allowable and objected to as being dependent upon a rejected base claims.

(8) Evidence Relied Upon

5,135,190	WILSON	08-1992
6,074,012	WU	6-2000
6,827,405	ROBERTS	12-2004
5,490,710	DEARING	02-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4, 6, 7, 9, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,135,190 to Wilson. This rejection is set forth in a prior Office Action, mailed on 07 April 2005.

Claims 3, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of U.S. Patent No. 6,074,012 to Wu. This rejection is set forth in a prior Office Action, mailed on 07 April 2005.

Claims 10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Wu as applied to claims 3, 5, and 8 above, and further in view of U.S. Patent No. 6,827,405 B1 to Roberts. This rejection is set forth in a prior Office Action, mailed on 07 April 2005.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Wu as applied to claims 3, 5, and 8 above, and further in view of U.S. Patent No. 5,490,710 to Dearing et al. This rejection is set forth in a prior Office Action, mailed on 07 April 2005.

(10) Response to Argument

With respect to independent claim 1, Appellant argues that the 35 U.S.C. § 102(b) rejection of claim 1 as being anticipated by Wilson is improper because the arm rest cover of Wilson does not open "into a forearm channel shaped to receive a forearm of said user." Specifically, Appellant states that, while Wilson teaches a channel 28 (Fig. 11), this channel is not *shaped to receive a forearm of the user*. This argument is unpersuasive because the channel taught in Wilson is clearly shaped to receive a user's

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forearm. In the summary of the of Wilson's invention, the object of the invention is "to support the forearm, the wrist, and palm of a user of hand operated equipment." (column 3, lines 8-9). This is accomplished in Wilson by the arm rest cover including "a concave top portion 28 for placement of an individual's limb therein." (column 4, lines 30-31). Moreover, column 4, lines 43-46 of Wilson states that the channel 28 "is formed in such a way that it cradles the user's limb and prevents the user's limb from sliding off which could result if that portion of saddle 22 was flat." Clearly, this indicates that the channel 28 of Wilson is shaped to receive a forearm of the user.

With respect to independent claim 20 and claim 2 dependent upon claim 1, Appellant argues that the 35 U.S.C. § 102(b) rejection of claims 2 and 20 as being anticipated by Wilson is improper because the arm rest cover of Wilson does not include a "vertical offset." Specifically, Appellant argues that the member 116 (Fig. 11) of Wilson is not a table and, therefore, Wilson fails to teach a table separated from the arm rest cover by a vertical offset. This argument is unpersuasive because Appellant has interpreted the "vertical offset" limitation too narrowly in requiring it to be dogleg shaped. Initially, please note that *Merriam-Webster's Collegiate Dictionary, Tenth Edition* defines a table as a piece of furniture consisting of a smooth flat slab fixed on legs; and as something that resembles a table. Therefore, Examiner reasonably interprets the limitation of a table as something that resembles a smooth flat slab. The member 116 meets this limitation because it resembles a smooth flat slab, see Figure 13. While the member 116 is preferably spoon shaped at its tab end 124, its substantial arm portion 118 is completely flat wherein this arm portion is longitudinally adjustable to

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accommodate users of various heights. Next, Examiner reasonably interprets the “vertical offset” in claims 2 and 20 as a vertical displacement between the table and the arm rest cover. In both embodiments of Wilson (see Figs. 1 and 11), the saddle 22 is vertically offset from the flat top portion 14 of the base 12. Diagram A below shows a composite figure of the second embodiment shown from the side elevation view. This vertical offset is formed of deformable material to cushion and mold to the shape of the user’s forearm. See column 4, lines 46-60. Therefore, Wilson teaches all the limitations of independent claim 20 and dependent claim 2, as Wilson teaches a table separated from the arm rest cover by a vertical offset.

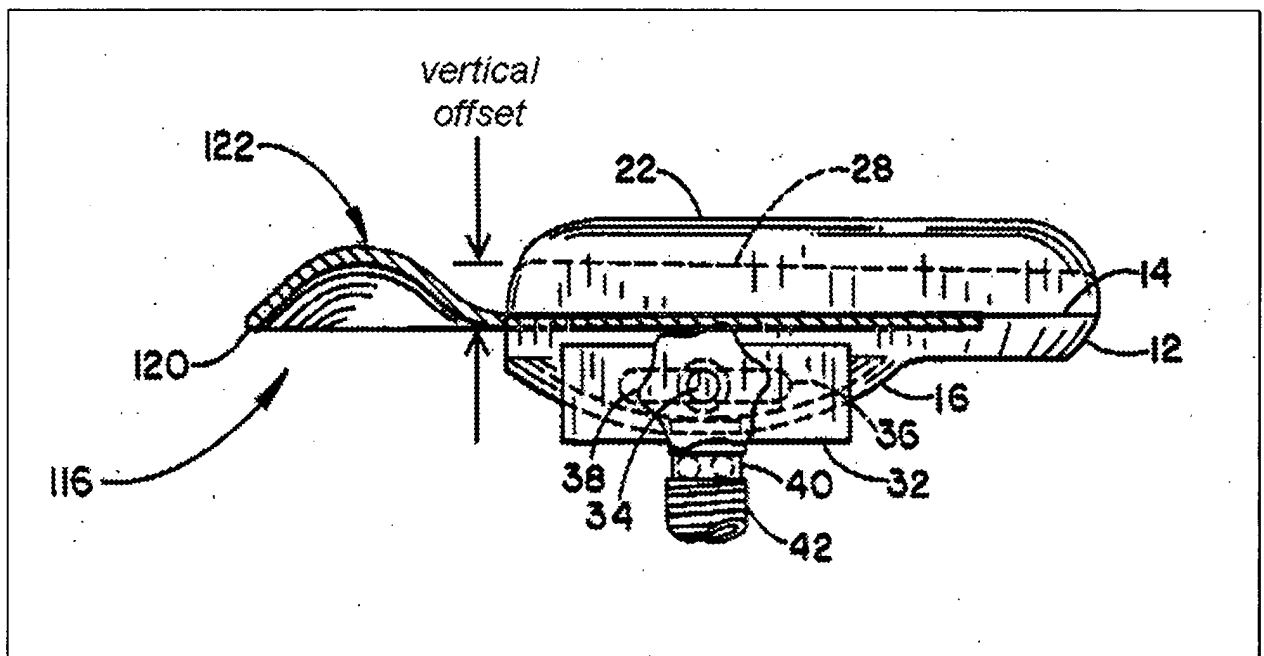


Diagram A - Composite Figure of the Figures 2 and 12 to Show a Side Elevation View of the Second Embodiment of Wilson.

With respect to dependent claims 3 and 19 that stand or fall together, Appellant argues that the 35 U.S.C. § 103(a) of claim 1 as being unpatentable over Wilson in view of Wu fails to teach a wrist channel. Initially, Appellant argues that Wilson in view of Wu fails to teach a vertical offset. However, Examiner has established above that Wilson alone teaches the table is separated from the arm rest cover by a vertical offset. The only argument toward the limitations of claim 3 is that the combination of Wilson in view of Wu is based upon improper hindsight reasoning. Please note that Wu shows an arm support similar to that of Wilson wherein the arm support has an arm rest cover 1 (see Fig. 2), a table 12 separated from the arm rest cover by a vertical offset, and a wrist channel 4 opening from the vertical offset and joined to the arm rest cover. The wrist channel of Wu is support by pivot post 41 (Fig. 1) extending through the table 12 to allow the wrist channel to rotate about the pivot post so that the user has padded wrist support that is easily adjustable. Examiner asserts that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant rejection, the motivation to combine Wilson in view of Wu is gleaned from the teachings in Wu that the wrist channel improves upon Wilson easily adjustable armrest by including a vertically offset wrist channel that is both padded and rotatable with respect to the armrest.

With respect to dependent claims 4 and 5, Appellant argues Wilson fails to teach a table and that member 116 is not inclined with respect to the arm rest cover. See the above statements regarding the teaching of a table by Wilson. The table of Wilson is rotatably adjustable about bolt 34 (see Diagram A above) such that the table may be inclined with respect to the armrest cover 40,42,44 (Fig. 4). See column 6, lines 25-36).

With respect to dependent claim 6, 7, and 9 that stand or fall together, Appellant argues that the feature of an angled pivot joint is not taught in Wilson. However, Appellant does not set forth any reasoning for this assertion. See Figure 4 of Wilson for the teaching that the arm support has a pivot bracket 48 proximate to a plethora of pivot joints all able to articulate to be at an angle depending on the needs of the specific user.

With respect to dependent claim 8, Appellant reiterates the features of claim 3 but fails to set forth what limitation of claim 8 is not taught by the combination of Wilson in view of Wu. Examiner's rejection of claim 3 and 6 addresses all the limitations of claim 8.

With respect to dependent claims 10 and 12-16 that stand or fall together, Appellant argues that the limitation of a strap looped around the armrest and locked into a lock on the mounting unit is not found or suggest in the prior art. However, Appellant does not address the 35 U.S.C. § 103(a) rejection of claims 10 and 12-16 as being unpatentable over Wilson, as modified by Wu, and in view of Roberts. Roberts shows an arm support similar to that of Wilson wherein the arm support has a mounting unit (see Fig. 5) with a top wall 17, a side wall 18 connected to the top wall, at least one strap 20 looped around the armrest 12 (Fig. 4) of a chair and locked into a lock 22 on

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the mounting unit. The Office Action mailed 07 April 2005 sets for the motivation to combine the references.

With respect to dependent claims 17-19, Appellant concedes that these claims are not patentably distinct, and, therefore, Examiner does not reiterate the grounds for rejection set forth in the Office Action mailed 07 April 2005.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joe Edell

March 20, 2006


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Conferees:

Peter Cuomo

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